IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Bhagirath. Versus Firm M/s. Mahaveer Prasad Surendra Mohan.

S.B. Criminal Misc. Petition No. 517/2005 against the order dated 25-4-2005 passed by the Additional Sessions Judge No.2, Sri Ganganagar, in Criminal Revision No. 34/2004.

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Date of Order: August 29, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. B.N. Kalla, for the petitioner.
Mr. M.K. Garg, for the non-petitioner.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 25-4-2005 passed by the Additional Sessions Judge No.2, Sri Ganganagar (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 34/2004, whereby the revision petition filed by the non-petitioner against the order dated 23-11-2004 passed by the Additional Chief Judicial Magistrate No.1, Sri Ganganagar (for short, "the trial Court" hereinafter) was allowed and the order of the trial Court dated 23-111-2004 recalling PW 1 complainant Shakti Kumar along with books of accounts for five years was set aside.

I have heard learned counsel for the parties. Carefully gone through the orders passed by the courts below.

A complaint was filed by the non-petitioner against the petitioner for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act" hereinafter) alleging therein that against the out-standing amount, the petitioner issued a cheque for Rs. 2,91,000/- dated 30-6-2003 drawn on Punjab National Bank and the said cheque, on being sent to the bank for encashment, was dishonoured and returned unpaid on account of "insufficient amount" to the account of the petitioner. A legal notice was served requiring the petitioner to make payment of the cheque amount within fifteen days from the date of receipt of the notice but as the petitioner failed to pay the cheque amount within the stipulated period and, therefore, the complaint was filed within the statutory period. The parties led the evidence. However, an application under Section 311 of the Code was moved by the petitioner seeking recalling of the witness along with the books of account for five years and that application was allowed. The complainant filed a revision petition against the order of the trial Court and the Revisional Court, by a well-reasoned and elaborate order, allowed the revision. Hence this criminal miscellaneous petition by the petitioner.

From the order of the Revisional Court, it appears

that after closer of the evidence of the complainant/non-petitioner and before recording the statement of the accused-petitioner under Section 313 of the Code, the accused-petitioner filed an application under Section 91 of the Code for summoning of the documents. The trial Court, vide order dated 16-4-2004, directed the complainant/non-petitioner to produce the books of accounts mentioned in para 2 of the complaint, which were in the power and possession of the complainant/non-petitioner. When the complainant came with the books of accounts in compliance of the order dated 16-4-2004, the counsel for the accused-petitioner stated that the complete account books have not been filed and, therefore, the trial court, vide order dated 30.4.2004, directed the complainant to produce the cash book and complete account books for five years. In compliance of the order dated 30-4-2004, the complainant/non-petitioner appeared before the Court along with the complete account books on 27-5-2004, however, the accused-petitioner failed to appear before the trial Court and his bail bonds were forfeited. Thereafter, the petitioner appeared on 24-7-2004, he was released on bail and his statement under Section 313 of the Code was recorded on 18-8-2004. The books of accounts were made available to the petitioner, he inspected the books of accounts and the matter was posted for defence evidence. On 29-4-2004, the petitioner filed an application under Section 315

of the Code seeking permission to appear as a defence witness , which was allowed and the statement of the petitioner as a witness was recorded. Thereafter the petitioner again moved an application for recalling the witness PW 1 along with the complete accounts books for five years, which were already produced by the complainant, as noticed above, on earlier dates. The Revisional Court noticed that after perusing the relevant books of accounts by the accused-petitioner, he appeared as a witness under Section 315 of the Code and made his statement and did not come with any plea that some of the entries do not bear his signatures and at the fag end of the trial, the petitioner moved the application despite having been afforded ample opportunity to lead evidence in defence. In my view, the Revisional Court was justified in setting aside the order of the trial Court keeping in view the facts and circumstances noticed above. It cannot be said that the order impugned would result in serious miscarriage of justice or abuse of process of the Court warranting interference in inherent jurisdiction.

The criminal miscellaneous petition is, therefore, dismissed. The interim order dated 13-5-2005, as extended from time to time, is vacated and the stay petition stands dismissed.

(H.R. PANWAR), J.

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